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OFFICE OF PETITIONS

In re Application of
Robert Garrett
Application No. 10/691,967
Filed: October 24, 2003
Attorney Docket No. GARR-0009

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ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed on December 11, 2006. This is also a decision on the petition under 37 CFR 1.137(b), filed alternatively, on December 11, 2006.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The record reflects that a non-final Office action was mailed on September 27, 2005, allowing a shortened statutory period for reply of three months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was filed on March 30, 2006 (certificate of mailing dated March 27, 2006), with a request for an extension of time within the third month. A Notice of Abandonment was mailed on November 29, 2006, stating that the response of March 30, 2006, was not a bona fide response because amended claims and remarks did not accompany the substitute specification and marked-up copy of the specification filed. The instant petition was filed on December 11, 2006. Petitioner maintains that a proper response was filed on March 30, 2006, and included remarks and claims.

TREATMENT UNDER 37 CFR 1.181

The Patent and Trademark Office (the Office) file is the official record of the papers originally filed in this application. A review of the application file did not reveal claims or remarks filed March 30, 2006. In order for this petition to withdraw the holding of abandonment to be successful, petitioner must establish, by *prima facie* evidence, that claims and remarks were filed on March 30, 2006. Such *prima facie* evidence would include an itemized Office date-stamped postcard whereby the Office acknowledges receipt of the claims and remarks on March 30, 2006. Other *prima facie* evidence might include a copy of the claims and remarks containing a certificate of mailing dated on, or before, March 27, 2006. The evidence provided with the petition establishes that a response was filed on March 30, 2006, but does not provide *prima facie* evidence of what was received. Because the abandonment of the application hinges on the receipt or non-receipt of the claims and remarks, the holding of abandonment cannot be withdrawn absent *prima facie* evidence of the Office's receipt of the claims and remarks. The petition is dismissed, accordingly.

It is noted that petitioner has filed a request for the petition to be treated under 37 CFR 1.137(a). The undersigned has determined that the petition under 37 CFR 1.137(a) is not likely to be successful. Accordingly, the petition will be not be treated under 37 CFR 1.137(a) to avoid the petition fee that will be incurred if the petition was treated on it merits under 37 CFR 1.137(a).

TREATMENT UNDER 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is granted.

Deposit account 50-1393 will be charged \$750.00 for the instant petition fee.

The claims and remarks filed December 11, 2006, are noted.

The application file is being directed to Technology Center 3700, GAU 3724 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.



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Petitions Attorney
Office of Petitions